IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 502

BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioner*,

v.

CERTAIN CARRIERS REPRESENTED BY THE EASTERN, WESTERN & SOUTHEASTERN CARRIERS CONFERENCE COMMITTEES, THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, *Respondents*.

PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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1. Certain cases cited by the Carriers on page 6, decided by the Court below, have been superseded by later decisions of that Court holding that certain procedural issues are *res judicata*. Petitions for certiorari in such later cases are now pending in this Court, Nos. 499, 500, and 620. This situation emphasizes the confusion heretofore engendered by the decisions in this area calling for clarification and definition by this Court.

2. On page 7 of the Opposition the Carriers state that in January, 1966, the Brotherhood brought suit instead of going to Arbitration Board No. 282 for an interpretation. This was done because the Brotherhood believed that the basic issue had been clearly answered by earlier interpretations of Board 282, and because it believed that Board 282 would cease to exist in a few days and thus could not answer requests for interpretations. In footnote 4 on page 11, the Carriers concede that Board 282 has issued no answers to requests for interpretation since the expiration of the award almost 2 years ago, although some such requests that had been submitted prior to the expiration of the award have not been answered.

3. At various places in their Opposition, on page 10 and elsewhere, the Carriers refer to Award 282 as having been made "under" or "pursuant to" sections 7 and 8 of the Railway Labor Act. Such representations are misleading although the quotation is literally accurate from Public Law 88-108. By beginning a quotation in the middle of a sentence the Carriers may make it appear that Award 282 was an award under sections 7 and 8 of the Railway Labor Act. But section 4 of Public Law 188 provides that "the arbitration shall be *conducted* pursuant to sections 7 and 8 of the Railway Labor Act." (Emphasis added.) There is not a word in P.L. 88-108 or elsewhere providing or even hinting that the consequences of the award of Board 282 should be the same as the consequences of arbitration awards made under sections 7 and 8 of the Railway Labor Act; it is provided only that the procedures should be conducted in accordance with sections 7 and 8.

4. On page 11, in point 2(a), the Carriers say that the issue here is not of importance because there are not likely to be many disputes concerning the interpretation of Award 282. But, if as the Court below held in other cases, the rules established by or pursuant to Award 282 continue in effect until changed in accordance with the procedures of the Railway Labor Act, there may be thousands of such additional disputes in the indeterminate future. Indeed, on page 14 of the Opposition the Carriers point out that in less than two years Board 282 made hundreds of interpretations pursuant to requests presented to the Board and there are some that remain unanswered.

5. On page 12 the Carriers state that the authority of Board 282 now derives not from P.L. 88-108 but directly from sections 7 and 8 of the Railway Labor Act. This is an astonishing assertion. Everyone must agree now that P.L. 88-108 has expired and it must be plain that any incorporating of any provisions of the Railway Labor Act into P.L. 88-108 expired with the expiration of P.L. 88-108. Absent the continued existence of P.L. 88-108, the authority of Board 282 to do anything would derive from a non-existent statute.

6. On page 13 the Carriers state that all the parties concerned understand that Arbitration Board 282 continued to exist after the expiration of P.L. 88-108, since requests for interpretations were made after the expiration of 180 days after the enactment of the Statute. They refer to Petitions Nos. 499, 500, and 501 involving interpretations made more than 180 days after the enactment of P.L. 88-108.

P.L. 88-108 provided in section 8 that it should expire 180 days after the date of its enactment except

for certain purposes, and for those purposes would expire two years after the date the award should take effect. It is not clear for what purposes the Act expired at the end of the period of 180 days or at the end of the two-year period. It is clear that none of the Unions requested anything of Board 282 after the two-year period nor has the National Mediation Board done so.

7. On page 14 the Carriers say, and assume the validity of the statement, the the National Railroad Adjustment Board has exclusive jurisdiction of claims and grievances arising by reason of Award 282. The cases they cite in footnote 9 in support of that assertion have no relevance to such assertion. Indeed, that is one of the issues in unrelated litigation now pending in the Court below, No. 20,378, *Southern Pacific Co.* v. *Brotherhood of Locomotive Firemen and Enginemen.*

8. On page 14 the Carriers say also, in footnote 8, that Congress meant that the award was to continue in effect for not more than two years, not that Board 282 should continue in effect for no longer than that period. But Congress very plainly provided that P.L. 88-108 should not be in effect for any purpose after two years, and with the statute no longer in effect it is difficult to comprehend how the Board can be in effect. Suppose that if instead of Congress enacting P.L. 88-108 and providing that it should expire at the end of the two-year period it had enacted the statute without any expiration provisions and at the end of the two-year period had repealed it, nobody would contend that somehow the agency created in the first statute continued in existence after the repeal of the statute creating it. It is not perceived how includ-

ing the expiration in the first statute differs in an
degree of substance from enacting the expiration late

Respectfully submitted,

JOHN H. HALEY, JR.,
MILTON KRAMER,

Attorneys for Petitioner.

HALEY, BARDGETT & WILLIAMSON
818 Olive Street,
St. Louis, Missouri 63101,

SCHOENE and KRAMER
1625 K St., N. W.
Washington, D. C. 20006

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